

FILED

NOV 21 2017

Clerk, U.S. Courts
District Of Montana
Missoula Division

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BUTTE DIVISION

WILLIAM NORDHOLM,

Plaintiff,

vs.

TIM BARKELL, et al.,

Defendants.

CV 17-11-BU-BMM-JCL

ORDER

Plaintiff William Nordholm, appearing pro se, filed his amended pleading as permitted by the Court's Order entered August 29, 2017. In the referenced Order the Court found two of Nordholm's four claims for relief pled in his original pleading were sufficiently pled to state claims for relief, and that the claims would be served on Defendants requiring them to respond. (Doc. 8 at 7 and 9.) In his amended pleading Nordholm has again sufficiently restated those same two claims for relief.

As stated in the referenced Order the Court found the other two of Nordholm's four claims were insufficiently pled and did not state a viable claim for relief. One of those claims alleged that Defendants Richard Pasha and John Doe conspired to file false criminal charges against him. In its August 29, 2017 Order, the Court noted the claim would be subject to dismissal under the authority

of *Heck v. Humphrey*, 512 U.S. 477 (1994) unless Nordholm could amend his pleading to demonstrate that the charges had been dismissed, or to show that, if Nordholm had been convicted on the charges, his conviction was later overturned.

In his amended pleading Nordholm now alleges he pled not guilty to the allegedly false charges, and then the charges were later dismissed. Accordingly, on the face of Nordholm's amended allegations, the holding in *Heck* might not bar the claim for relief. Additionally, accepting Nordholm's allegations as true, the Court finds they state a claim upon which relief could be granted if proven true. *See Devereaux v. Abbey*, 263 F.3d 1070, 1074-75 (9th Cir. 2001) (noting that "[t]here is a clearly established constitutional due process right not to be subjected to criminal charges on the basis of false evidence that was deliberately fabricated by the government"). Consequently, the Court will serve this claim on Defendants to obtain their response.

Nordholm has not restated the last of the four claims which he originally asserted in his initial pleading. Therefore, the Court finds Nordholm has elected to drop the claim.

Based upon the foregoing, the Court issues the following:

ORDER

Pursuant to Fed. R. Civ. P. 4(d), the Court will request Defendants to waive

service of the summons and Nordholm's Amended Complaint by executing, or having counsel execute, the Waiver of Service of Summons. The Waiver must be returned to the Court within thirty (30) days of the entry date of this Order as reflected on the Notice of Electronic Filing. If Defendants choose to return the Waiver of Service of Summons, their answer or appropriate motion will be due within 60 days of the entry date of this Order as reflected on the Notice of Electronic Filing, pursuant to Fed. R. Civ. P. 12(a)(1)(B). *See also* 42 U.S.C. § 1997e(g)(2).

The Clerk of Court shall forward the documents listed below to each

Defendant:

- * Amended Complaint (Doc. 9);
- * August 29, 2017 Order (Doc. 8);
- * this Order,
- * a Notice of Lawsuit & Request to Waive Service of Summons; and
- * a Waiver of Service of Summons

The Clerk of Court is directed to forward the documents to each Defendant at the following address

800 South Oak Street
Anaconda, MT 59711

The Clerk of Court is further directed to forward a copy of this Order to the following:

Ben Krakowka
Anaconda Deer Lodge County Attorney
800 Main St.
Anaconda, MT 59711

Counsel for each Defendant must file a “Notice of Appearance” as a separate document at the time an Answer or Rule 12 motion is filed. *See* D. Mont. L.R. 12.2.

Any party’s request that the Court grant relief, make a ruling, or take an action of any kind must be in the form of a motion, with an appropriate caption designating the name of the motion, served on all parties to the litigation, pursuant to Federal Rules of Civil Procedure 7, 10, and 11. If a party wishes to give the Court information, such information must be presented in the form of a notice. The Court will not consider requests made or information presented in letter form.

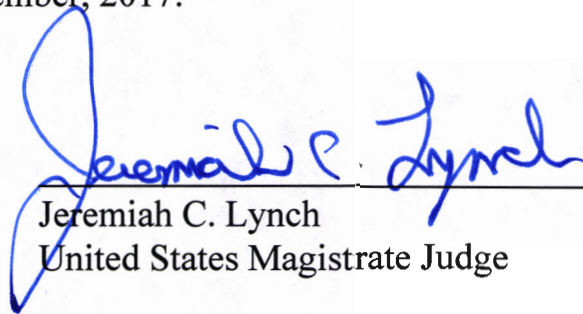
Pursuant to Fed.R.Civ.P. 5(d)(1), all documents presented for the Court’s consideration must be simultaneously served by first-class mail upon the opposing party or their counsel if the party is represented. Each party shall sign and attach a proper certificate of service to each document filed with the Court. The Certificate of Service must state the date on which the document was deposited in the mail and the name and address of the person to whom the document was sent. The sender must sign the certificate of service.

Nordholm shall not make any motion for default until at least seventy (70) days after the date of this Order.

Pursuant to Local Rule 26.1(d), no party may begin discovery until a Scheduling Order has been issued.

At all times during the pendency of this action, Nordholm shall immediately advise the Court and opposing counsel of any change of address and its effective date. Failure to file a Notice of Change of Address may result in the dismissal of the action for failure to prosecute pursuant to Fed.R.Civ.P. 41(b).

DATED this 21st day of November, 2017.



Jeremiah C. Lynch
United States Magistrate Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BUTTE DIVISION

WILLIAM NORDHOLM,

Plaintiff,

vs.

TIM BARKELL, et al.,

Defendants.

CV 17-11-BU-BMM-JCL

Rule 4 Notice of a Lawsuit and
Request to Waive Service of
Summons

TO: Anaconda Deer Lodge County
c/o Ben Krakowka
Anaconda Deer Lodge County Attorney
800 Main St.
Anaconda, MT 59711

A lawsuit has been filed, against you in this Court under the number shown above. A copy of the Amended Complaint is attached.

This is not a summons, or an official notice from the court. It is a request that, to avoid the cost of service by the U.S. Marshal's Service, you waive formal service of a summons by signing and returning the enclosed waiver. To avoid these expenses, you must file the signed waiver within 30 days from the date shown below, which is the date this notice was sent.

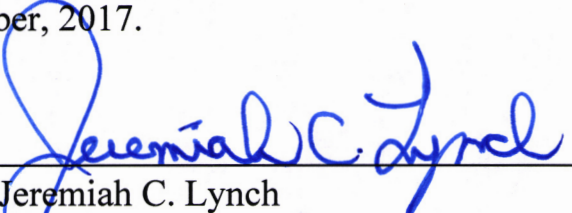
If you file the signed waiver, the action will then proceed as if you were served on the date the waiver is filed, but no summons will be served on you and

you will have 60 days from the date this notice is sent (see the date below) to answer the Complaint.

If you do not return the signed waiver within the time indicated, the Court will order the U.S. Marshal's Service to serve the summons and complaint on you and may impose the full costs of such service.

Please read the statement below about the duty to avoid unnecessary expenses.

DATED this 21st day of November, 2017.



Jeremiah C. Lynch
United States Magistrate Judge

Duty to Avoid Unnecessary Expenses of Serving a Summons

Rule 4 of the Federal Rules of Civil Procedure requires certain defendants to cooperate in saving unnecessary expenses of serving a summons and complaint. A defendant who is located in the United States and who fails to return a signed waiver of service requested by a plaintiff located in the United States will be required to pay the expenses of service, unless the defendant shows good cause for the failure.

“Good cause” does not include a belief that the lawsuit is groundless, or that it has been brought in an improper venue, or that the court has no jurisdiction over this matter or over the defendant or the defendant’s property.

If the waiver is signed and returned, you can still make these and all other defenses and objections, but you cannot object to the absence of a summons or of service.

If you waive service, then you must, within the time specified on the waiver form, serve an answer or a motion under Rule 12 on the plaintiff and file a copy with the court. By signing and returning the waiver form, you are allowed more time to respond than if a summons had been served.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BUTTE DIVISION

WILLIAM NORDHOLM,

Plaintiff,

vs.

TIM BARKELL, et al.,

Defendants.

CV 17-11-BU-BMM-JCL

Rule 4 Notice of a Lawsuit and
Request to Waive Service of
Summons

TO: Tim Barkell
800 South Oak Street
Anaconda, MT 59711

A lawsuit has been filed, against you in this Court under the number shown above. A copy of the Amended Complaint is attached.

This is not a summons, or an official notice from the court. It is a request that, to avoid the cost of service by the U.S. Marshal's Service, you waive formal service of a summons by signing and returning the enclosed waiver. To avoid these expenses, you must file the signed waiver within 30 days from the date shown below, which is the date this notice was sent.

If you file the signed waiver, the action will then proceed as if you were served on the date the waiver is filed, but no summons will be served on you and you will have 60 days from the date this notice is sent (see the date below) to

answer the Complaint.

If you do not return the signed waiver within the time indicated, the Court will order the U.S. Marshal's Service to serve the summons and complaint on you and may impose the full costs of such service.

Please read the statement below about the duty to avoid unnecessary expenses.

DATED this 21st day of November, 2017.



Jeremiah C. Lynch
United States Magistrate Judge

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“Good cause” does not include a belief that the lawsuit is groundless, or that it has been brought in an improper venue, or that the court has no jurisdiction over this matter or over the defendant or the defendant's property.

If the waiver is signed and returned, you can still make these and all other defenses and objections, but you cannot object to the absence of a summons or of service.

If you waive service, then you must, within the time specified on the waiver form, serve an answer or a motion under Rule 12 on the plaintiff and file a copy with the court. By signing and returning the waiver form, you are allowed more time to respond than if a summons had been served.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BUTTE DIVISION

WILLIAM NORDHOLM,

Plaintiff,

vs.

TIM BARKELL, et al.,

Defendants.

CV 17-11-BU-BMM-JCL

Rule 4 Notice of a Lawsuit and
Request to Waive Service of
Summons

TO: Bill Sather
800 South Oak Street
Anaconda, MT 59711

A lawsuit has been filed, against you in this Court under the number shown above. A copy of the Amended Complaint is attached.

This is not a summons, or an official notice from the court. It is a request that, to avoid the cost of service by the U.S. Marshal's Service, you waive formal service of a summons by signing and returning the enclosed waiver. To avoid these expenses, you must file the signed waiver within 30 days from the date shown below, which is the date this notice was sent.

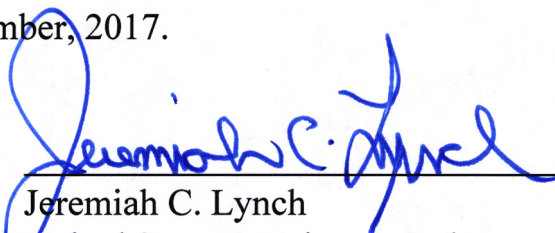
If you file the signed waiver, the action will then proceed as if you were served on the date the waiver is filed, but no summons will be served on you and you will have 60 days from the date this notice is sent (see the date below) to

answer the Complaint.

If you do not return the signed waiver within the time indicated, the Court will order the U.S. Marshal's Service to serve the summons and complaint on you and may impose the full costs of such service.

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Jeremiah C. Lynch
United States Magistrate Judge

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“Good cause” does not include a belief that the lawsuit is groundless, or that it has been brought in an improper venue, or that the court has no jurisdiction over this matter or over the defendant or the defendant's property.

If the waiver is signed and returned, you can still make these and all other defenses and objections, but you cannot object to the absence of a summons or of service.

If you waive service, then you must, within the time specified on the waiver form, serve an answer or a motion under Rule 12 on the plaintiff and file a copy with the court. By signing and returning the waiver form, you are allowed more time to respond than if a summons had been served.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BUTTE DIVISION

WILLIAM NORDHOLM,

Plaintiff,

vs.

TIM BARKELL, et al.,

Defendants.

CV 17-11-BU-BMM-JCL

Rule 4 Notice of a Lawsuit and
Request to Waive Service of
Summons

TO: Richard Pasha
800 South Oak Street
Anaconda, MT 59711

A lawsuit has been filed, against you in this Court under the number shown above. A copy of the Amended Complaint is attached.

This is not a summons, or an official notice from the court. It is a request that, to avoid the cost of service by the U.S. Marshal's Service, you waive formal service of a summons by signing and returning the enclosed waiver. To avoid these expenses, you must file the signed waiver within 30 days from the date shown below, which is the date this notice was sent.

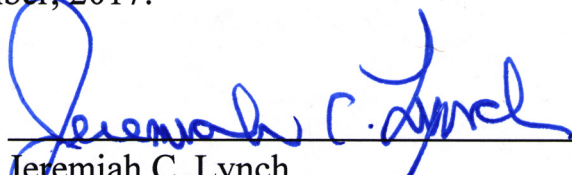
If you file the signed waiver, the action will then proceed as if you were served on the date the waiver is filed, but no summons will be served on you and you will have 60 days from the date this notice is sent (see the date below) to

answer the Complaint.

If you do not return the signed waiver within the time indicated, the Court will order the U.S. Marshal's Service to serve the summons and complaint on you and may impose the full costs of such service.

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“Good cause” does not include a belief that the lawsuit is groundless, or that it has been brought in an improper venue, or that the court has no jurisdiction over this matter or over the defendant or the defendant's property.

If the waiver is signed and returned, you can still make these and all other defenses and objections, but you cannot object to the absence of a summons or of service.

If you waive service, then you must, within the time specified on the waiver form, serve an answer or a motion under Rule 12 on the plaintiff and file a copy with the court. By signing and returning the waiver form, you are allowed more time to respond than if a summons had been served.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BUTTE DIVISION

WILLIAM NORDHOLM,

Plaintiff,

vs.

TIM BARKELL, et al.,

Defendants.

CV 17-11-BU-BMM-JCL

Rule 4 Notice of a Lawsuit and
Request to Waive Service of
Summons

TO: Mark Durkin
800 South Oak Street
Anaconda, MT 59711

A lawsuit has been filed, against you in this Court under the number shown above. A copy of the Amended Complaint is attached.

This is not a summons, or an official notice from the court. It is a request that, to avoid the cost of service by the U.S. Marshal's Service, you waive formal service of a summons by signing and returning the enclosed waiver. To avoid these expenses, you must file the signed waiver within 30 days from the date shown below, which is the date this notice was sent.

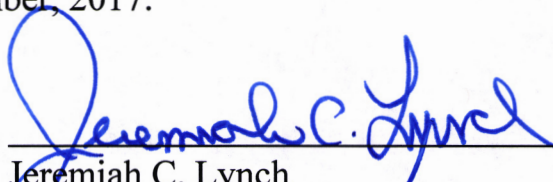
If you file the signed waiver, the action will then proceed as if you were served on the date the waiver is filed, but no summons will be served on you and you will have 60 days from the date this notice is sent (see the date below) to

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"Good cause" does not include a belief that the lawsuit is groundless, or that it has been brought in an improper venue, or that the court has no jurisdiction over this matter or over the defendant or the defendant's property.

If the waiver is signed and returned, you can still make these and all other defenses and objections, but you cannot object to the absence of a summons or of service.

If you waive service, then you must, within the time specified on the waiver form, serve an answer or a motion under Rule 12 on the plaintiff and file a copy with the court. By signing and returning the waiver form, you are allowed more time to respond than if a summons had been served.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BUTTE DIVISION

WILLIAM NORDHOLM,

Plaintiff,

vs.

TIM BARKELL, et al.,

Defendants.

CV 17-11-BU-BMM-JCL

Rule 4 Notice of a Lawsuit and
Request to Waive Service of
Summons

TO: Brendon Staley
800 South Oak Street
Anaconda, MT 59711

A lawsuit has been filed, against you in this Court under the number shown above. A copy of the Amended Complaint is attached.

This is not a summons, or an official notice from the court. It is a request that, to avoid the cost of service by the U.S. Marshal's Service, you waive formal service of a summons by signing and returning the enclosed waiver. To avoid these expenses, you must file the signed waiver within 30 days from the date shown below, which is the date this notice was sent.

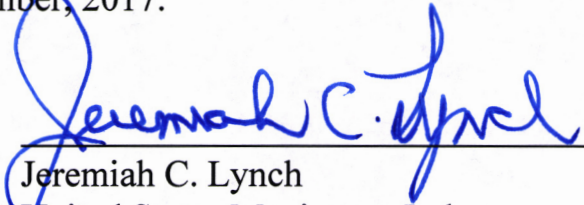
If you file the signed waiver, the action will then proceed as if you were served on the date the waiver is filed, but no summons will be served on you and you will have 60 days from the date this notice is sent (see the date below) to

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If you do not return the signed waiver within the time indicated, the Court will order the U.S. Marshal's Service to serve the summons and complaint on you and may impose the full costs of such service.

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“Good cause” does not include a belief that the lawsuit is groundless, or that it has been brought in an improper venue, or that the court has no jurisdiction over this matter or over the defendant or the defendant's property.

If the waiver is signed and returned, you can still make these and all other defenses and objections, but you cannot object to the absence of a summons or of service.

If you waive service, then you must, within the time specified on the waiver form, serve an answer or a motion under Rule 12 on the plaintiff and file a copy with the court. By signing and returning the waiver form, you are allowed more time to respond than if a summons had been served.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BUTTE DIVISION

WILLIAM NORDHOLM,

Plaintiff,

vs.

TIM BARKELL, et al.,

Defendants.

CV 17-11-BU-BMM-JCL

Rule 4 Waiver of the Service of
Summons

TO: The U.S. District Court for the District of Montana

The following Defendant acknowledges receipt of your request to waive service of summons in this case. Defendant also received a copy of the Amended Complaint. I am authorized by the following Defendant to agree to save the cost of service of a summons and an additional copy of the Amended Complaint in this action by not requiring that the following individual be served with judicial process in the case provided by Fed.R.Civ.P. 4.

Name of Defendant: _____

The above-named Defendant understands that he will keep all defenses or objections to the lawsuit, the Court's jurisdiction, and the venue of the action, but waives any objections to the absence of a summons or of service.

Defendant also understands that he must file and serve an answer or a

motion under Rule 12 within 60 days from the date when the Request for Waiver of Service of Summons was filed and if he fails to so default judgment will be entered against him.

Date: _____

(Signature of the attorney
or unrepresented party)

(Printed name)

(Address)

(E-mail address)

(Telephone number)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BUTTE DIVISION

WILLIAM NORDHOLM,

Plaintiff,

vs.

TIM BARKELL, et al.,

Defendants.

CV 17-11-BU-BMM-JCL

Rule 4 Waiver of the Service of
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TO: The U.S. District Court for the District of Montana

The following Defendant acknowledges receipt of your request to waive service of summons in this case. Defendant also received a copy of the Amended Complaint. I am authorized by the following Defendant to agree to save the cost of service of a summons and an additional copy of the Amended Complaint in this action by not requiring that the following individual be served with judicial process in the case provided by Fed.R.Civ.P. 4.

Name of Defendant: _____

The above-named Defendant understands that he will keep all defenses or objections to the lawsuit, the Court's jurisdiction, and the venue of the action, but waives any objections to the absence of a summons or of service.

Defendant also understands that he must file and serve an answer or a

motion under Rule 12 within 60 days from the date when the Request for Waiver of Service of Summons was filed and if he fails to so default judgment will be entered against him.

Date: _____

(Signature of the attorney
or unrepresented party)

(Printed name)

(Address)

(E-mail address)

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IN THE UNITED STATES DISTRICT COURT
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WILLIAM NORDHOLM,

Plaintiff,

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Name of Defendant: _____

The above-named Defendant understands that he will keep all defenses or objections to the lawsuit, the Court's jurisdiction, and the venue of the action, but waives any objections to the absence of a summons or of service.

Defendant also understands that he must file and serve an answer or a

motion under Rule 12 within 60 days from the date when the Request for Waiver of Service of Summons was filed and if he fails to so default judgment will be entered against him.

Date: _____

(Signature of the attorney
or unrepresented party)

(Printed name)

(Address)

(E-mail address)

(Telephone number)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BUTTE DIVISION

WILLIAM NORDHOLM,

Plaintiff,

vs.

TIM BARKELL, et al.,

Defendants.

CV 17-11-BU-BMM-JCL

Rule 4 Waiver of the Service of
Summons

TO: The U.S. District Court for the District of Montana

The following Defendant acknowledges receipt of your request to waive service of summons in this case. Defendant also received a copy of the Amended Complaint. I am authorized by the following Defendant to agree to save the cost of service of a summons and an additional copy of the Amended Complaint in this action by not requiring that the following individual be served with judicial process in the case provided by Fed.R.Civ.P. 4.

Name of Defendant: _____

The above-named Defendant understands that he will keep all defenses or objections to the lawsuit, the Court's jurisdiction, and the venue of the action, but waives any objections to the absence of a summons or of service.

Defendant also understands that he must file and serve an answer or a

motion under Rule 12 within 60 days from the date when the Request for Waiver of Service of Summons was filed and if he fails to so default judgment will be entered against him.

Date: _____

(Signature of the attorney
or unrepresented party)

(Printed name)

(Address)

(E-mail address)

(Telephone number)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BUTTE DIVISION

WILLIAM NORDHOLM,

Plaintiff,

vs.

TIM BARKELL, et al.,

Defendants.

CV 17-11-BU-BMM-JCL

Rule 4 Waiver of the Service of
Summons

TO: The U.S. District Court for the District of Montana

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Name of Defendant: _____

The above-named Defendant understands that he will keep all defenses or objections to the lawsuit, the Court's jurisdiction, and the venue of the action, but waives any objections to the absence of a summons or of service.

Defendant also understands that he must file and serve an answer or a

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Date: _____

(Signature of the attorney
or unrepresented party)

(Printed name)

(Address)

(E-mail address)

(Telephone number)

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Plaintiff,

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TO: The U.S. District Court for the District of Montana

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Name of Defendant: _____

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motion under Rule 12 within 60 days from the date when the Request for Waiver of Service of Summons was filed and if he fails to so default judgment will be entered against him.

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